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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 15-0045 PACA-D

In re:

TAYLOR PRODUCE, LLC,

Respondent.

Appearances:

Christopher Young, Esq. for Complainant

No appearance by Respondent

Before:

Janice K. Bullard
Administrative Law Judge

DECISION WITHOUT HEARING BY REASON OF DEFAULT

I. INTRODUCTION

This matter involves a disciplinary proceeding brought pursuant to the provisions of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (PACA), Regulations promulgated pursuant to the PACA (7 C.F.R §§ 46.1 through 46.45), and the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By the Secretary (7 C.F.R. §§ 1.130 through 1.151)(Rules of Practice).

The Fruit and Vegetable Program, Agricultural Marketing Service of the United States Department of Agriculture (Complainant; AMS), initiated this proceeding against Taylor Produce, LLC (Respondent) by filing a disciplinary Complaint, alleging that Respondent, while acting as a growers' agent, willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)).

II. ISSUES

1. Whether default should be entered in this matter;

2. Whether a hearing is necessary in this matter;

3. Whether Respondent willfully violated the Act; and

4. Whether the sanctions recommended by Complainant should be imposed.

II. STATEMENT OF THE CASE

1. Procedural History

On December 22, 2014, Complainant filed a complaint with the Hearing Clerk for USDA's Office of Administrative Law Judges. The Hearing Clerk sent a copy of the complaint to Respondent and his attorney, Robin Dunn, by certified mail through the United States Postal Service (USPS). On January 7, 2015, the certified mail return receipt signed by Robin Dunn was received at the Office of the Hearing Clerk from USPS. On January 29, 2015, the certified mail return receipt signed by Alan Taylor, principle for the Respondent, was received at the Office of the Hearing Clerk from USPS. Both acknowledgments of receipt of certified mail were signed on December 29, 2014.

No answer was filed, and on February 6, 2015, I Ordered Respondent to show cause why default should not be entered. The Order was sent to Respondent and to attorney Robin Dunn by regular mail through USPS. No response to my Order was received. Neither mailing was returned as undeliverable by the USPS.

On February 20, 2015, Complainant filed a motion for entry of a Decision without hearing by reason of default, which was sent to Respondent and attorney Robin Dunn by regular mail on that date. The motion was again sent to Respondent and attorney Robin Dunn by certified mail on April 2, 2015. None of those mailings was returned as undeliverable, and the certified mail return receipts for the mailings of April 2, 2015, have not been returned to the Hearing Clerk's office by the USPS. No response to Complainant's motion has been received.

2. Statutory and Regulatory Authority

Pursuant to the Rules of Practice, a respondent is required to file an Answer within twenty (20) days after service of a Complaint. 7 C.F.R. § 1.136(a). The Rules of Practice also provide that an Answer "shall . . . [c]learly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent." 7 C.F.R. § 1.136(b)(1). The failure to timely file an Answer or failure to deny or otherwise respond to an allegation proffered in the Complaint shall be deemed admission of all the material allegations in the Complaint; in such situation, default shall be appropriate. 7 C.F.R. § 1.136(c).

Additionally, the Rules of Practice prescribe that, when computing the time permitted for a party to file a document or other paper, Saturdays, Sundays, and Federal holidays are to be included except when the time expires on one of those days; should such situation occur, the time period shall be extended to include the next business day. 7 C.F.R. § 1.147(h). The Rules of Practice also state that a document sent by the Hearing Clerk "shall be deemed to be received by any party to a proceeding . . . on the date of delivery by certified or registered mail. . ." 7 C.F.R. § 1.147(c)(1).

The Rules of Practice further provide that "[t]he failure to file an answer … shall constitute a waiver of the hearing. Upon such. . . failure to file, complainant shall file a proposed decision along…Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto." 7 C.F.R. § 1.139.

III. DISCUSSION

1. Whether Entry of Decision by Reason of Default Without Hearing Is Appropriate

The record here reflects that an individual bearing the name of Respondent's principle officer acknowledged receipt of the certified mailing of the Complaint, as did an attorney for the Respondent. No answer was filed, and regular mail was not returned. Respondent failed to

respond to my Order to show cause why default should not be entered, and Respondent also failed to respond to Complainant's motion for entry of a decision and Order by reason of default. Neither of the mailings of those documents to Respondent was returned as undeliverable. Accordingly, I find that the Complaint was served upon the Respondent, and Respondent failed to file an answer. Therefore, pursuant to 7 C.F.R. § 1.136(c), Respondent is deemed to have admitted the allegations set forth in the Complaint, and entry of default is appropriate. See 7 C.F.R. §§ 1.136(c), 1.139.

Accordingly, I find that Respondent has admitted the gravamen of Complainant's allegations, thereby obviating the need for a hearing in this matter. The material allegations of the Complaint are thus adopted as findings of fact. I further find it appropriate to enter a decision on the record by reason of default. This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

2. Sanctions

I find that by failing to answer the complaint, failing to respond to my Order, and failing to object to Complainant's motion for default, Respondent has admitted to the allegations of the complaint. Accordingly, I find that Complainant's proposed sanctions in this case are warranted.

The Department's sanction policy is set forth in *In re: S.S. Farms Linn County, Inc.*, (Decision as to James Joseph Hickey & Shannon Hansen), 50 Agric. Dec. 476 (U.S.D.A. 1991), aff'd, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3), and provides that appropriate weight should be given to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose of the Act. *S.S. Farms Linn County, Inc.*, 50 Agric. Dec. at 497. "In assessing penalties, the Secretary is required to give due consideration to the size of the business involved, the

gravity of the violation, the person's good faith, and the history of previous violations." *In re Roach*, 51 Agric. Dec. 252, 264 (U.S.D.A. 1992). The purpose of assessing sanctions is not to punish violators but to deter future similar behavior by the violator and others. *In re: Zimmerman*, 57 Agric. Dec. 1038, 1998 WL 799196, at *16 (U.S.D.A. 1998).

IV. FINDINGS OF FACT

1. Respondent is a corporation organized and existing under the laws of the state of Idaho, with a business address in Rigby, Idaho 83442 (the last known business address of Respondent.)

2. At all times material herein, Respondent was licensed and operating subject to the provisions of the PACA under license number 20120711, which was issued to Respondent on March 9, 2012.

3. The license terminated on February 28, 2014, after the company went out of business.

4. Respondent, while acting as a growers' agent, during the period June, 2013, through December, 2013, on or about the dates and in the transactions set forth in Appendix A to the Complaint in this case, failed to remit net proceeds to five (5) growers for 605,492 net cwt. of perishable agricultural commodities which Respondent received, accepted and sold on behalf of growers in interstate and foreign commerce, in the total amount of $3,943,926.68.

V. CONCLUSIONS OF LAW

Respondent's failure to remit net proceeds with respect to the transactions referenced above, and set forth in Appendix A to the Complaint, constitutes willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

ORDER

A finding is made that Respondent has committed willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), and the facts and circumstances of the violations shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

Pursuant to the Rules of Practice governing procedures under the PACA, this Decision will become final without further proceeding 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R §§ 1.139 and 1.145).

Copies of this Decision shall be served upon the parties by the Hearing Clerk.

So ORDERED this 28th day of May, 2015, in Washington, DC.

[redacted]

Janice K. Bullard
Administrative Law Judge